STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 2, 2006
v	No. 257160 Berrien Circuit Court
VINCENT EDWARD CROSSLEY, Defendant-Appellant.	LC No. 99-402195-FC

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Defendant appeals by right his sentence for second-degree murder, MCL 750.317, entered after a jury trial. Defendant was initially sentenced as a fourth habitual offender, MCL 769.12, to life imprisonment. We affirmed defendant's conviction but remanded for resentencing because of a guidelines scoring error. *People v Vincent Crossley*, unpublished per curiam opinion of the Court of Appeals, issued November 15, 2002 (Docket No. 224772). Defendant was again sentenced to life in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The statutory sentencing guidelines apply to the present case, as the offense occurred after January 1, 1999. MCL 769.34(2); *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001). Except for the exceptional case where a substantial and compelling reason exists justifying departure, the legislative guidelines require a court to impose a minimum sentence within the appropriate sentence range. MCL 769.34(2), (3); *People v Babcock*, 469 Mich 247, 257-258; 666 NW2d 231 (2003). The sentencing court has discretion in determining the number of points scored, provided there is evidence on the record that adequately supports a particular score. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). If the minimum sentence imposed is within the guidelines range, we must affirm and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on in determining the sentence. MCL 769.34(10); *Babcock, supra* at 261.

Defendant admits that his life sentence fell within the applicable sentencing guidelines of 180 to 600 months or life. However, he maintains that the trial court's sentencing decision was based on an erroneous factual finding that he had participated in an earlier homicide of a child. This assertion is without merit. Any possible misassumption the trial court had was cured during resentencing when the prosecutor and defense counsel again clarified that defendant had not previously been convicted of homicide. He had been convicted of second-degree child abuse.

The trial court specifically indicated its understanding that this earlier conviction was for second-degree child abuse. Defendant has not shown that the trial court labored under a misapprehension of fact when it resentenced him.

Defendant also argues that his life sentence constitutes cruel and unusual punishment. We review constitutional questions de novo. *People v Conat*, 238 Mich App 134, 144; 605 NW2d 49 (1999). In deciding whether a punishment is cruel or unusual, we look to the gravity of the offense and the harshness of the penalty, compare the penalty to those imposed for other crimes in this state as well as the penalty imposed by other states for the instant offense, and consider the goal of rehabilitation. *People v Launsburry*, 217 Mich App 358, 363; 551 NW2d 460 (1996). Statutes are presumed to be constitutional, and we construe them as being constitutional absent a clear showing of unconstitutionality. *Id*.

Defendant's argument is without merit. We note that several other crimes are punishable by a life sentence with the possibility of parole, including assault with intent to commit murder, MCL 750.83; armed robbery, MCL 750.529; criminal sexual conduct in the first degree, MCL 750.520b; kidnapping, MCL 750.349; conspiracy to commit murder, MCL 750.157a; and bank robbery, MCL 750.531. None of these crimes necessarily entails the death of another person. In addition, we note that several states have approved sentences of life imprisonment for second-degree murder convictions, even for juvenile offenders. See *Louisiana v Payne*, 482 So 2d 178, 181-182 (La App, 1986) (affirming mandatory life sentence without parole for a juvenile); *Nebraska v Laravie*, 194 Neb 548; 233 NW2d 789 (1975) (life sentence upheld); *People v Smith*, 635 NYS2d 824; 217 AD2d 221, 226-227 (1995) (sentence of juvenile to nine years to life upheld); and *Arizona v Toney*, 113 Ariz 404; 555 P2d 650, 655 (1976) (affirming sentence of juvenile to sixty years to life). Moreover, our Supreme Court has held that a mandatory life sentence without the possibility of parole is not cruel or unusual punishment for a conviction for first-degree murder. *People v Hall*, 396 Mich 650, 657-658; 242 NW2d 377 (1976). Defendant's sentence is moderate in comparison, especially considering his fourth-habitual offender status.

Defendant lastly maintains that his sentence is disproportionate. Even were we not constrained by MCL 769.34(10) to affirm the sentence, we would find it proportionate given the circumstances of this offense.

We affirm.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey